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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, MARIA NGUYEN,
 WILLIAM BYATT, JEREMY DAVIS, and
 CHRISTOPHER CASTILLO, individually
 and on behalf of all other similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

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Case No. 5:20-cv-03664-LHK

**[PROPOSED] STIPULATED PROTECTIVE
 ORDER**

Dept.: Courtroom 6, 4th Floor
 Judge: Magistrate Judge Susan van Kuelen

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

1 2.6 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner in which it is generated, stored, or maintained (including, among other things,
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
4 responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
6 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
7 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
9 or of a Party's competitor.

10 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
13 less restrictive means.

14 2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
15 extremely sensitive "Confidential Information or Items" representing computer code and
16 associated comments and revision histories, formulas, engineering specifications, or schematics
17 that define or otherwise describe in detail the algorithms or structure of software or hardware
18 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
19 serious harm that could not be avoided by
20 less restrictive means.

21 2.10 House Counsel: attorneys who are employees of a party to this action. House
22 Counsel does not include Outside Counsel of Record or any other outside counsel.

23 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
24 entity not named as a Party to this action.

25 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
26 action but are retained to represent or advise a party to this action and have appeared in this
27 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
28 that party.

1 2.13 Party: any party to this action, including all of its officers, directors, employees,
2 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

3 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
4 Material in this action.

5 2.15 Professional Vendors: persons or entities that provide litigation support services
6 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
7 organizing, storing, or retrieving data in any form or medium, and professional jury or trial
8 consultants) and their employees and subcontractors, who (1) have been retained by a Party or its
9 counsel to provide litigation support services with respect to this action, (2) are (including any
10 employees and subcontractors) not a past or current employee of a Party or have not been
11 employed within the past five years by a Party's competitor, and (3) at the time of retention, are
12 not anticipated to become an employee of a Party or of a Party's competitor.

13 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
14 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or as
15 "HIGHLY CONFIDENTIAL – SOURCE CODE."

16 2.17 Receiving Party: Outside Counsel for a Party or Designated House Counsel that
17 receives Disclosure or Discovery Material from a Producing Party.

18 3. SCOPE

19 The protections conferred by this Stipulation and Order cover not only Protected Material
20 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
21 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
22 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
23 However, the protections conferred by this Stipulation and Order do not cover the following
24 information: (a) any information that is in the public domain at the time of disclosure to a
25 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
26 a result of publication not involving a violation of this Order, including becoming part of the
27 public record through trial or otherwise; and (b) any information known to the Receiving Party
28 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who

obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

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1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 3 Disclosure or Discovery

4 Material that qualifies for protection under this Order must be clearly so designated
 5 before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents,
 8 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 9 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 10 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains
 11 protected material. If only a portion or portions of the material on a page qualifies for protection,
 12 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 13 appropriate markings in the margins) and must specify, for each portion, the level of protection
 14 being asserted.

15 A Party or Non-Party that makes original documents or materials available for inspection
 16 need not designate them for protection until after the inspecting Party has indicated which
 17 material it would like copied and produced. During the inspection and before the designation, all
 18 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
 19 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
 20 copied and produced, the Producing Party must determine which documents, or portions thereof,
 21 qualify for protection under this Order. Then, before producing the specified documents, the
 22 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 24 CODE) to each page that contains Protected Material. If only a portion or portions of the
 25 material on a page qualifies for protection, the Producing Party also must clearly identify the
 26 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
 27 each portion, the level of protection being asserted.
 28

1 (b) for testimony given in deposition or in other pretrial or trial proceedings,
2 that the Designating Party when practical identify on the record, before the close of the
3 deposition, hearing, or other proceeding, all protected testimony and specify the level of
4 protection being asserted. When it is impractical to identify separately each portion of testimony
5 that is entitled to protection and it appears that substantial portions of the testimony may qualify
6 for protection, the Designating Party may invoke on the record (before the deposition, hearing, or
7 other proceeding is concluded) a right to have up to 21 days to identify the specific portions of
8 the testimony as to which protection is sought and to specify the level of protection being
9 asserted. Only those portions of the testimony that are appropriately designated for protection
10 within the 21 days shall be covered by the provisions of this Stipulated Protective Order.
11 Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if
12 that period is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL”
13 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 Parties shall give the other parties reasonable notice (a minimum of two business days) if
15 they reasonably expect a deposition, hearing, or other proceeding to include Protected Material
16 so that the other parties can ensure that only authorized individuals who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those proceedings.
18 The specific document(s) which constitute Protected Material need not be disclosed in advance
19 of a deposition. The use of a document as an exhibit at a deposition shall not in any way affect its
20 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY.”

22 Transcripts containing Protected Material shall have an obvious legend on the title page
23 that the transcript contains Protected Material, and the title page shall be followed by a list of all
24 pages (including line numbers as appropriate) that have been designated as Protected Material
25 and the level of protection being asserted by the Designating Party. The Designating Party shall
26 inform the court reporter of these requirements. Any transcript that is prepared before the
27 expiration of a 21-day period for designation shall be treated during that period as if it had been
28 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless

otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In

1 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
2 designation was not proper and must give the Designating Party an opportunity to review the
3 designated material, to reconsider the circumstances, and, if no change in designation is offered,
4 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
5 stage of the challenge process only if it has engaged in this meet and confer process first or
6 establishes that the Designating Party is unwilling to participate in the meet and confer process in
7 a timely manner.

8 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
9 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
10 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
11 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and
12 confer process will not resolve their dispute, whichever is earlier. Each such motion must be
13 accompanied by a competent declaration affirming that the movant has complied with the meet
14 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
15 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
16 shall automatically waive the confidentiality designation for each challenged designation. In
17 addition, the Challenging Party may file a motion challenging a confidentiality designation at
18 any time if there is good cause for doing so, including a challenge to the designation of a
19 deposition transcript or any portions thereof.¹

20 The burden of persuasion in any such challenge proceeding shall be on the Designating
21 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
22 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
23 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
24 file a motion to retain confidentiality as described above, all parties shall continue to afford the
25
26

27 ¹ In the event of repeated and abusive challenges, the Designating Party has the right to petition
28 the Court and ask that the burden be shifted to the Challenging Party to file challenge motions.
Even if granted, however, the burden of persuasion would remain on the Designating Party.

material in question the level of protection to which it is entitled under the Designating Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation, and shall not be used for any business purpose, in connection with any other legal proceeding, or directly or indirectly for any other purpose whatsoever. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner² that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

² It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during depositions and hearings, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless the Designating Party objects upon a notice of a deposition or calling a witness at a hearing, as described below, or otherwise ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order. Upon notice of a deposition or calling a witness at a hearing, the Designating Party may identify Confidential documents that should not be shown to the witness, triggering an expedited duty to confer in advance of the deposition or hearing. If the parties cannot reach agreement, the Designating Party may seek a protective order in the ordinary course.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or personally knows or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for

1 this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
2 A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been
3 followed;

4 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
5 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
6 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below,
7 have been followed;

8 (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, and
10 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
11 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
12 and

13 (f) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or personally knows or knew the information,
15 unless the Designating Party objects upon a notice of a deposition or calling a witness at a
16 hearing, as described below, or otherwise ordered by the Court. For purposes of this provision,
17 Defendant will be deemed an “author or recipient” of any Discovery Material authored by an
18 employee of Defendant. During any testimony at a deposition, hearing, or trial, any current
19 employee of Defendant may be shown any document authored by anyone while employed with
20 Defendant; this includes an employee of Defendant’s parent Alphabet who was an employee of
21 Defendant at the time the document was authored. Upon notice of deposition or testimony at a
22 hearing or trial, a Designating Party may identify certain documents that are not to be shown to
23 the deponent or witness, triggering an expedited duty to meet and confer. If no agreement can be
24 reached, the Designating Party may seek a protective order in the ordinary course. If the witness
25 is a former employee of Defendant, Defendant shall have further right to request additional limits
26 on the use of certain documents even if authored or received by the witnesses, which request will
27 also trigger an expedited duty to meet and confer. If no agreement can be reached, the
28 Defendant may seek a protective order in the ordinary course.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Designated House Counsel or Experts.

(a)(1) [Purposefully left blank.]

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the Designating Party³ that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,⁴ and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.⁵

³ For a Designating Party that is a Non-Party, experts previously disclosed and approved prior to the Non-Party’s production of any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” need not be disclosed to said Non-Party unless such Non-Party requests such information prior to the production of any Protected Material. Moreover, unless otherwise requested by the Non-Party, subsequently disclosed experts need not be disclosed to the Non-Party before that Non-Party’s Protected Material may be disclosed thereto.

⁴ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

⁵ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination of the litigation that could foreseeably result in an improper

(Footnote Continued on Next Page.)

1 (b) A Party that makes a request and provides the information specified in the
2 preceding respective paragraphs may disclose the subject Protected Material to the identified
3 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
4 receives a written objection from the Designating Party. Any such objection must set forth in
5 detail the grounds on which it is based.

6 (c) A Party that receives a timely written objection must meet and confer with
7 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
8 agreement within seven days of the written objection. If no agreement is reached, the Party
9 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
10 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
11 seeking permission from the court to do so. Any such motion must describe the circumstances
12 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel
13 or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail,
14 and suggest any additional means that could be used to reduce that risk. In addition, any such
15 motion must be accompanied by a competent declaration describing the parties' efforts to resolve
16 the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
17 setting forth the reasons advanced by the Designating Party for its refusal to approve the
18 disclosure.

19 (d) In any such proceeding, the Party opposing disclosure to Designated
20 House Counsel or the Expert shall bear the burden of proving that the risk of harm that the
21 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to
22 disclose the Protected Material to its Designated House Counsel or Expert.

23 (e) A party who has not previously objected to disclosure of Protected
24 Material to an Expert or whose objection has been resolved with respect to previously produced
25 Protected Material shall not be precluded from raising an objection to an Expert at a later time
26 with respect to Protected Material that is produced after the time for objecting to such Expert has
27 _____

28 use of the Designating Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
information.

1 expired or if new information about that Expert is disclosed or discovered. Any such objection
2 shall be handled in accordance with the provisions set forth above.

3 8. [Purposefully left blank.]

4 9. SOURCE CODE

5 (a) To the extent production of source code becomes necessary in this case, a
6 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”
7 if it comprises or includes confidential, proprietary or trade secret source code.

8 (b) Protected Material designated as “HIGHLY CONFIDENTIAL –
9 SOURCE CODE” shall be subject to all of the protections afforded to “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information, and may be disclosed only to
11 the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
12 information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with the exception of
13 Designated House Counsel.

14 (c) Any source code produced in discovery shall be made available for
15 inspection, in a format allowing it to be reasonably reviewed and searched, during normal
16 business hours or at other mutually agreeable times, at a location that is reasonably convenient
17 for the Receiving Party and any experts to whom the source code may be disclosed. The source
18 code shall be made available for inspection on a secured computer in a secured room without
19 Internet access or network access to other computers, and the Receiving Party shall not copy,
20 remove, or otherwise transfer any portion of the source code onto any recordable media or
21 recordable device. The Producing Party may visually monitor the activities of the Receiving
22 Party’s representatives during any source code review, but only to ensure that there is no
23 unauthorized recording, copying, or transmission of the source code. If, due to the COVID-19
24 epidemic, source code review under these parameters is not reasonably feasible, the parties shall
25 meet-and-confer concerning alternative methods of review. To the extent that the parties cannot
26 agree on a feasible alternative, the parties shall bring any dispute to the attention of the Court and
27 this provision may be modified on a showing of good cause.
28

(d) The Receiving Party may request paper copies of limited portions of source code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute resolution.

(e) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized individual.

10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena issued by a court, arbitral, administrative, or legislative body, or with a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the person who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this Protective Order. Such notification shall include a copy of this Stipulated
6 Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued
8 by the Designating Party whose Protected Material may be affected.⁶

9 If the Designating Party timely⁷ seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
12 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from
13 which the subpoena or order issued, unless the Party has obtained the Designating Party’s
14 permission. The Designating Party shall bear the burden and expense of seeking protection in
15 that court of its confidential material – and nothing in these provisions should be construed as
16 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
17 another court.

18 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
19 LITIGATION

20 (a) The terms of this Order are applicable to information produced by a Non-
21 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such
23 information produced by Non-Parties in connection with this litigation is protected by the
24
25

26 _____
27 ⁶ The purpose of imposing these duties is to alert the interested parties to the existence of this
28 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
its confidentiality interests in the court from which the subpoena or order issued.

⁷ The Designating Party shall have at least 14 days from the service of the notification pursuant to
Section 10 to seek a protective order.

remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely objects or seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.⁸ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated

⁸ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by agreement with other Parties or by applying to the Court if such agreement cannot be reached. Furthermore, without application to the Court, any party that is a beneficiary of the protections of this Order may enter a written agreement releasing any other party hereto from one or more requirements of this Order even if the conduct subject to the release would otherwise violate the terms herein.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

1 14.3 No Agreement Concerning Discoverability. The identification or agreed upon
 2 treatment of certain types of Disclosure and Discovery Material does not reflect agreement by
 3 the Parties that the disclosure of such categories of Disclosure and Discovery Material is required
 4 or appropriate in this action. The Parties reserve the right to argue that any particular category of
 5 Disclosure and Discovery Material should not be produced.

6 14.4 Filing Protected Material. Without written permission from the Designating Party
 7 or a court order secured after appropriate notice to all interested persons, a Party may not file in
 8 the public record in this action any Protected Material. A Party that seeks to file under seal any
 9 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be
 10 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
 11 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
 12 request establishing that the Protected Material at issue is privileged, protectable as a trade
 13 secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file
 14 Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then
 15 the Receiving Party may file the Protected Material in the public record pursuant to Civil Local
 16 Rule 79-5(e)(2) unless otherwise instructed by the court.

17 14.5 No Limitation on Legal Representation. Nothing in this Order shall preclude or
 18 impede Outside Counsel of Record's ability to communicate with or advise their client in
 19 connection with this litigation based on such counsel's review and evaluation of Protected
 20 Material, provided however that such communications or advice shall not disclose or reveal the
 21 substance or content of any Protected Material other than as permitted under this Order.

22 14.6 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms of
 23 this Stipulated Protective Order as of the date counsel for such party executes this Stipulated
 24 Protective Order, even if prior to entry of this Order by the Court.

25 15. FINAL DISPOSITION

26 Within 60 days after the final disposition of this action, as defined in paragraph 4,
 27 each Receiving Party must return all Protected Material to the Producing Party or destroy such
 28 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,

1 compilations, summaries, and any other format reproducing or capturing any of the Protected
2 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
3 submit a written certification to the Producing Party (and, if not the same person or entity, to the
4 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
5 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
6 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
7 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
8 retain an archival copy of all pleadings, motions and trial briefs (including all supporting and
9 opposing papers and exhibits thereto), written discovery requests and responses (and exhibits
10 thereto), deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or
11 introduced into evidence at any hearing or trial, and their attorney work product and
12 correspondence which refers or is related to any CONFIDENTIAL and CONFIDENTIAL
13 OUTSIDE COUNSEL ONLY information for archival purposes only. Any such archival copies
14 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
15 Section 4 (DURATION).

16 16. INTERPRETATION, ENFORCEMENT, AND CONTINUING JURISDICTION

17 The United States District Court for the Northern District of California is responsible for
18 the interpretation and enforcement of this Order. After final disposition of this litigation, the
19 provisions of this Order shall continue to be binding except with respect to that Disclosure or
20 Discovery Material that become a matter of public record. This Court retains and shall have
21 continuing jurisdiction over the Parties and recipients of the Protected Material for enforcement
22 of the provision of this Order following final disposition of this litigation. All disputes
23 concerning Protected Material produced under the protection of this Order shall be resolved by
24 the United States District Court for the Northern District of California.

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28 ///

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: October 12, 2020

SUSMAN GODFREY L.L.P.

4 By /s/ Amanda K. Bonn

Amanda K. Bonn

5 Attorneys for Plaintiffs

6 DATED: October 12, 2020

QUINN EMANUEL URQUHART & SULLIVAN, LLP

7 By /s/ Viola Trebicka

8 Viola Trebicka

9 Attorneys for Defendant Google LLC

10 PURSUANT TO STIPULATION, IT IS SO ORDERED.

11
12 DATED: _____

Hon. Susan van Kuelen,

13 United States Magistrate Judge

ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Stipulated Protective Order. Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document.

Dated: October 12, 2020

By: /s/ Amanda K. Bonn

Amanda K. Bonn

Counsel for Plaintiffs

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I have
 read in its entirety and understand the Stipulated Protective Order that was issued by the United
 States District Court for the Northern District of California on [date] in the case of *Brown et al.*
v. Google LLC, Case No. 5:20-CV-03664-LHK. I agree to comply with and to be bound by all
 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
 promise that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Northern District of California for the purpose of enforcing the terms of this Stipulated
 Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]